

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND DIVISION**

**EMILY HARDING, on behalf of herself  
and all others similarly situated,**

Plaintiffs,

v.

**STEAK N SHAKE, INC.,**

Defendant.

**Case No. 1:21-CV-1212**

**JUDGE BRIDGET MEEHAN BRENNAN**

**DEFENDANT’S REPLY AND NOTICE OF WITHDRAWAL OF ITS MOTION TO  
STRIKE PLAINTIFFS’ EXPERT DECLARATION OF LIESL FOX, PH.D.**

Defendant hereby submits its Reply to Plaintiffs’ Response to Defendant’s Motion to Strike as well as its Notice of Withdrawal of its Motion to Strike.<sup>1</sup>

Defendant’s counsel has no recollection of receiving the November 11, 2022 email from Patty Barnes attaching Plaintiffs’ expert disclosure of Dr. Liesl Fox, nor of it being received by Corey Thrush who is no longer affiliated with Ogletree Deakins. Had Defendant’s counsel actually been aware of said email, presumably it would have been the subject of discussion and action in response to it.

Defendant’s counsel, Patrick Hulla, conducted a personal search of his email account and he could not locate the November 11, 2022 email from Ms. Barnes. Notwithstanding, an investigation by Defendant’s counsel’s IT Department into the email accounts of Mr. Hulla and Ms. Thrush was able to determine the email was received by Defendant’s network, but the investigation was unable to determine whether the email was ever opened.

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<sup>1</sup> Although Defendant is withdrawing its Motion to Strike the Expert Declaration of Dr. Fox, it reserves the right to separately challenge the issue of admissibility of Dr. Fox’s opinion.

Despite Defendant's counsel's questions about receipt of the November 11, 2022 email from Ms. Barnes, based on the IT Department investigation, and Plaintiffs' counsel's representations, Defendant has decided to withdraw its Motion to Strike.

Respectfully submitted,

**Ogletree, Deakins, Nash, Smoak &  
Stewart, P.C.**

/s/ Patrick F. Hulla

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***Attorneys for Defendant***

**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2023 a copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Mathew A. Parker  
Mathew A. Parker (0093231)

*Attorney for Defendant*